



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Chip Pickering
Regions Plaza, Suite 1262
210 East Capitol Street
Jackson, MS 39201

JUN 22 2010

RE: MUR 6217
Chip Pickering

Dear Mr. Pickering:

On October 14, 2009, the Federal Election Commission notified you of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended. A copy of the complaint was forwarded to you at that time.

Upon further review of the allegations contained in the complaint and information supplied by you, the Commission, on June 15, 2010, voted to dismiss the complaint's allegations as they pertain to you. Accordingly, the Commission closed its file in this matter. The Factual and Legal Analysis, which more fully explains the Commission's decision, is enclosed for your information.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003).

If you have any questions, please contact April Sands, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in cursive script that reads "Mark Allen".

Mark Allen
Assistant General Counsel

Enclosure
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

MUR 6217

RESPONDENTS:

Commerce, Hope, Innovation & Progress PAC
and Danna S. Lane, in her official capacity as
treasurer

Chip Pickering

I. INTRODUCTION

The complaint alleges violations of 2 U.S.C. § 441f and 11 C.F.R. § 110.4(b) stemming from a \$5,000 contribution to David Vitter for U.S. Senate ("Vitter Committee") made on August 11, 2009 by Haley's PAC and its treasurer ("Haley's PAC"), a multi-candidate political action committee associated with Mississippi Governor Haley Barbour, that allegedly was reimbursed by Commerce, Hope, Innovation & Progress PAC and Danna S. Lane, in her official capacity as treasurer ("CHIP PAC"), a multi-candidate political action committee sponsored by former Congressman Chip Pickering. The complaint bases its allegations on the following: (1) in the same week that Haley's PAC contributed \$5,000 to the Vitter Committee, Haley's PAC received a contribution in an identical amount from CHIP PAC; (2) based on its receipt and contributions history, it was not common for Haley's PAC to make contributions; in fact, Haley's PAC's contribution to the Vitter Committee was only one of two it had made during 2009, and Haley's PAC disclosed only \$13,281.37 cash outstanding at the end of the reporting period in which it made the Vitter contribution; (3) the contribution to Haley's PAC constituted CHIP PAC's first contribution in 2009; (4) there are media-sensitive reasons Chip Pickering would want to hide the fact that his PAC was providing support to Senator Vitter; and (5) Chip Pickering and

1 Austin Barbour, nephew to Haley and then-treasurer of Haley's PAC, work together at a lobbying
2 firm, and therefore had the opportunity to devise the alleged conduit scheme. CHIP PAC and Chip
3 Pickering submitted a joint response ("Joint Response") that maintains that the complaint fails to
4 establish reason to believe that the respondents made a contribution in the name of another or
5 received a prohibited earmarked contribution, and, thus, urges the Commission to find no reason to
6 believe the respondents violated the Act, and dismiss the complaint. For the reasons below, the
7 Commission dismisses the complaint against Chip Pickering and Commerce, Hope, Innovation &
8 Progress PAC and Danna S. Lane, in her official capacity as treasurer.

9 II. DISCUSSION

10 The complaint alleges that CHIP PAC may have made a contribution in the name of
11 Haley's PAC to the Vitter Committee. The Federal Election Campaign Act of 1971, as amended
12 (the "Act") provides that "[n]o person shall make a contribution in the name of another person or
13 knowingly permit his name to be used to effect such a contribution and no person shall knowingly
14 accept a contribution made by one person in the name of another person." 2 U.S.C. § 441f. This
15 prohibition extends to persons who knowingly help or assist in making such contributions.
16 See 11 C.F.R. § 110.4(b)(1)(iii).

17 On August 11, 2009, Haley's PAC made a \$5,000 contribution to the Vitter Committee.
18 Four days later, CHIP PAC made a \$5,000 contribution to Haley's PAC. CHIP PAC disclosed its
19 contribution to Haley's PAC on its 2009 Year-End Report filed January 26, 2010. The Joint
20 Response states that Haley's PAC's \$5,000 contribution to the Vitter Committee "was made in
21 connection with a fundraising event held for the Vitter Committee in Jackson, Mississippi on

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1 August 12, 2009.” Joint Response at 2. The response also notes that the contribution at issue was,
2 on its face, from a permissible source and in compliance with the Act’s contribution limits, and
3 suggests that the complaint is based solely on speculation. Joint Response at 5.

4 The complaint also alleges that Chip Pickering and Austin Barbour, the treasurer of
5 Haley’s PAC at the time of the contributions in issue, had the opportunity to devise the alleged
6 conduit scheme as both worked together at the same lobbying firm. It cites to an Internet blog
7 report stating that Austin Barbour reportedly responded “no comment” to the allegations.
8 See Complaint at 3, footnote 6. In response, CHIP PAC provided affidavits from Chip Pickering
9 and its treasurer. Both affidavits state that the affiants had no communications or discussions, and
10 were aware of none, between CHIP PAC personnel and Senator Vitter or Vitter Committee
11 personnel regarding CHIP PAC’s contribution to Haley’s PAC. See Affidavits of Chip Pickering
12 and Danna S. Lane, attached to the Joint Response. The affidavits do not address whether there
13 were any communications or discussions between CHIP PAC personnel and Haley’s PAC
14 personnel regarding the contributions at issue.

15 Although not alleged in the complaint, the Joint Response also asserts there were no
16 violations of the earmarking regulation at 11 C.F.R. § 110.6, which provides that all contributions
17 that a person earmarks or otherwise directs to a candidate through an intermediary or conduit are
18 considered contributions from the person to the candidate. The response provides copies of the
19 checks, which are unencumbered by any written designation or instruction, and an affidavit stating
20 that the contribution checks were not accompanied by any written encumbrance concerning the
21 contribution. In a recent enforcement matter, the Commission has determined that funds are

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1 considered earmarked only when there is clear documented evidence of acts by donors that
2 resulted in their funds being used by the recipient committees for expenditures on behalf of a
3 particular campaign. MUR 5732 (Matt Brown), Factual & Legal Analysis at 6.

4 Given that the contribution from CHIP PAC to Haley's PAC, and from Haley's PAC to the
5 Vitter Committee, were each disclosed and the contributions did not result in the Vitter Committee
6 receiving an excessive or prohibited contribution, it would not be an efficient use of the
7 Commission's resources to pursue this matter further given the relatively low amount at issue.
8 Accordingly, the Commission exercises its prosecutorial discretion and dismisses the complaint as
9 to Chip Pickering and Commerce, Hope, Innovation & Progress PAC and Danna S. Lane, in her
10 official capacity as treasurer. *See Heckler v. Chaney*, 470 U.S. 821, 831 (1985).

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